

REMARKS

Please reconsider and allow this application.

The Examiner's point noted in paragraph no. 1 of the Office Action, page 2 will be addressed separately. Any inconvenience to the Examiner is regretted. Inventor Siemensma has a middle initial "D." which means Dirk. The other inventor has middle initials J. M., as noted by the Examiner.

The Examiner objected to claims 4, 6-7 and 9-16 and also to claim 13. The objections should be reconsidered and withdrawn in view of the newly submitted claims.

The new claims avoid the European claim format with double ranges.

A bare reference to "amount" has been avoided in the new claims.

Improper multiple dependent claims have been re-written.

The objection to former claim 11 based on mono, di, etc. with respect to saccharide has been addressed with the new claims. It is respectfully suggested, however, that original claim 11 was itself free of objection, when read, as it should be, in view of the specification at page 3. *See, by analogy, Bio-Technology General Corp. v. Genentech, Inc.*, Appeal No. 00-1223 and 00-1267 (Fed. Cir. 2001) ("Speculative claim construction of a claim term is not grounds for invalidation based on nonenablement of the speculative construction.")

The objection to "including" and emulsifier has been addressed in the new claim set. The objection as to former claim 13 should be considered withdrawn, if not moot.

Former claims 15 and 16 have been canceled and replaced by new claims, which are drafted in process format.

The Examiner rejected claims 1-2, 4, 6-7, 11, 13 and 16 as anticipated by U.S. Patent 5,776,887. The Examiner also rejected claims 1-2, 4, 6-7, 9-11, 13 and 16 as anticipated by EP 0421309A2. The Examiner furthermore rejected claims 1-2, 4, 6-8, 11 and 13 as anticipated by PCT Patent Publication WO 95/22909. Lastly it appears the Examiner interposed an obviousness rejection of claims 1-5, 12, 14 and 15 over PCT Patent Publication WO 95/22909 in view of PCT Patent Publication WO 97 39641.

Applicants respectfully traverse these rejections and request their reconsideration and withdrawal.

First, new claim 17 and claims depending therefrom defines novel and unobvious inventions.

(A) The Wilbert et al '887 reference neither teaches nor would it have disclosed a composition in accordance with present claim 17. It is furthermore noted that the cited Wilbur et al. '887 reference directed to ordinarily skilled art is to include fibers. Those skilled in the art recognize that dietary fibers can delay gastric emptying and therefore delay the transfer of carbohydrates to the small intestine where the actual absorption of carbohydrates occurs. The dietary fibers can furthermore delay the absorption of carbohydrates in the small intestine as the fibers directly interfere with the absorption. It is not seen where the prior art teaches to omit one of its essential ingredients. Accordingly, please reconsider and withdraw the novelty rejection of claims 1-2, 4, 6-7, 11, 13 and 16 over Wilbur et al. '887.

(B) Applicants claims similarly define novel and unobvious inventions over the Kahn et al. EP '309 reference. This reference does not disclose, suggest or teach the free leucine and/or phenylalanine addition. As the present specification instructs those skilled in the art, the additional free leucine and/or phenylalanine is important in order to obtain the insulin response required for optionally stimulating the glycogen resynthesis after exercise. The present invention may address regulating carbohydrate metabolism whereas the cited Kahn et al. reference concerns regulating the protein metabolism (EP '309 at page 2, line 10). Accordingly, the present claimed inventions are deemed novel and unobvious over the cited Con et al. EP reference.

(C) Applicants respectfully submit that claims 1-2, 4, 6-8, 11 and 13 similarly define novel inventions over PCT International '909. The latter reference concerns protein management for Parkinson's Disease for which the group of large neutral amino acids has relevance as they may cross the blood brain barrier. With this in mind, it is evident that the reference teaches formulating two groups of different amino acids. For ease of reference, in the published claim 1 the weight to weight ratio of the two groups of amino acids varies from about 3:1 to 6.5:1. The ratio is taught according to the reference can, however, only be obtained through the use of collagen. What should be noted is that no additional free leucine and or phenolalyene is added

according to the reference. This is in contrast to the present claimed invention which contemplates a composition having an additional free amount of leucine and/or phenolalcyne to obtain the insulin response needed to stimulate glycogen resynthesis following intense exercise. Therefore, the present recited claims define over the reference.

(D) Applicants respectfully submit that claims 1-5, 12, 14 and 15 likewise define novel unobvious inventions over PCT International '909 taken in combination with PCT International '964.

(E) Second, new dependent claims 35-37 are clearly novel and unobvious. The references simply do not disclose or suggest these claimed inventions. The Examiner may wish to note former claims 1, 3, 10, 12 and 13 and also former claims 1, 3, 6, 10 and 12 in conjunction with these new claims.

As explained in the "Background of the invention" in the present specification, the applicants discovered that after exercise to exhaustion, a protein hydrolysate alone in a drink was not able to enhance the insulin response upon a carbohydrate load. This in contrast after an overnight fast where a protein hydrolysate indeed can enhance the insulin response. See table 1, 1st study of the present application and PCT '964. Surprisingly, after exercise to exhaustion, no such response was found. An insulin response upon consumption of a carbohydrate drink could be elicited when phenylalanine and leucine were added to the composition. In fact, the insulin response was linear with the phenylalanine and leucine intake (table 1, 3rd study of the present application). This discovery was very surprising and unexpected.

In the composition of WO 97/39641 (Berthelson) no additional free leucine and/or phenylalanine is present. As explained in the present patent application the addition of free leucine and/or phenylalanine to the carbohydrate and peptide material containing composition as defined in the present patent application allows the insulin response required for stimulating the glycogen resynthesis after intense exercise.

Accordingly, Applicants submit that their claims define over the references, even if they were combined.

In re Appln. of VAN LOON et al.
Application No. 09 750.031

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue.

In re Appln. of VAN LOON et al.
Application No. 09 750,031

If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

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APPENDIX

Claims 1-16 canceled.

New claims 17-40 added.